

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 755 of 2001
(Old No. 302 of 1994)

New India Assurance Company
Limited, Haldwani Appellant

Versus

Smt. Kiran Shukla & others Respondents

Mr. R.B. Agarwal, learned counsel for the appellant.
Mr. Amit Bhatt, learned counsel for the respondents.

Hon'ble P.C. Verma, A.C.J.
Hon'ble P.C. Pant, J.

(Delivered by Hon'ble P.C. Pant, J.)

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 16.08.1994 passed by Shri P.D. Dhaundiyal, the then learned IV Additional District Judge / Presiding Officer, Motor Accident Claims Tribunal, Nainital (Camp Haldwani) whereby in M.A.C. Case No. 212 of 1988 the Tribunal has awarded Rs. 1,90,000/- as compensation to the appellants/ claimants.

2. Brief facts of the case giving rise to the present appeal are that on 10.01.1988, Sunil Shukla (deceased) was travelling from Haldwani to Almora in a bus bearing registration No. URN 9428. The driver of the bus was driving it rashly and negligently. When the bus reached near Khairana, the driver lost control of the bus and it fell in a gorge and caught fire. Shri Sunil Shukla (deceased) and many other passengers got burn injuries and died. The deceased was 35 years of age at the time of his death. The deceased was employed as Assistant Panchayat Raj Officer and was earning Rs. 1,650/- per month as salary. Smt. Kiran Shukla,

claimant No. 1 is widow of the deceased while Master Nripendra Shukla (claimant No. 2) is the son of the deceased. Opposite party No. 1, Kanta Devi was owner of the vehicle and New India Assurance Company Ltd. (present appellant) was the company with whom the vehicle was ensured. Opposite party No. 4 in the petition was the driver of the vehicle in question.

3. In the written statement before the trial Court, the owner of the vehicle has admitted the accident and death of the passengers including that of Shri Sunil Shukla. However, the opposite parties including the owner have denied allegations that the bus was being driven rashly and negligently by the driver of the bus. Opposite party No. 2 (present appellant) has taken a further plea that the owner of the bus has no permit to ply the vehicle between Haldwani and Almora.

4. Learned Presiding officer of the trial after examining the pleas, framed following issues:

- i) Whether, the accident in question occurred on account of negligent in driving on the part of the driver of bus having registration No. URN 9428?
- ii) Whether, the bus was being driven at the relevant time for and on behalf of opposite party No.1 or for and on behalf of opposite party No. 4? In either case, its effect?
- iii) Whether, in the accident in question, Sunil Shukla, had died in the accident?
- iv) Whether, on the date of the alleged accident the opposite party No. 1 was not the owner of the vehicle and had no control over the vehicle and the driver? If so, its effect?
- v) Whether, at the relevant time bus was being driven without valid permit for the route in question? If so, its effect?

- vi) Which of the opposite parties is liable to pay compensation to the claimants?
- vii) To what amount of compensation, if any, the claimants are entitled?
- viii) Whether, the bus was owned by opposite party No. 4 on the date of accident, if so, its effect?

5. After recording the evidence of the parties and hearing them, learned Presiding officer of the Tribunal has found that the accident in question has taken place due to the rash and negligent driving on part of the driver, who was employed by opposite party No. 1 as owner of the bus. The Tribunal further found that since the bus was plying under Kumaon Motor Owners Union Ltd., hence it had the route permit. The Tribunal also came to the conclusion that the claimants are entitled to compensation to the tune of Rs. 1,90,000/- and the New India Assurance company Ltd. with whom the vehicle was ensured was liable to pay it. Accordingly, the Award was passed for the sum along with 10% interest on the amount of compensation. Aggrieved with the Award, New India Assurance company Ltd. has preferred this appeal.

6. We have heard learned counsel for the parties and perused the record. Evidence on record shows that monthly income of deceased was Rs. 1,650/-. Out of this amount the deceased would have spent at least one third of this amount on his own self as personal maintenance. So an amount of Rs. 1,000/- was rightly assessed as income which he would spent on his family. The age of the deceased was 35 years. As such multiplier of 15 is reasonable. The amount of compensation thus arrived is as under:

$$1000 \times 12 \times 15 = \text{Rs. } 1,80,000/-$$

7. Keeping in view that the deceased was the sole bread earner and also looking to the age of claimant No. 1 and that the responsibility of livelihood of the minor children was her after the death of her husband, an amount Rs. 10,000/- on account of mental pain and sufferings and loss of consortium assessed by the Tribunal was reasonable in this case. Therefore, a sum of Rs. 1,90,000/- as awarded by the Tribunal cannot be said to be excessive. Thus, total amount of compensation in this case comes out to Rs. 1,90,000/- which is liable to be paid by the present appellant i.e. New India Assurance Company Ltd.

8. In view of the aforesaid facts and circumstances of the case, we find no fault in the order passed by the Claims Tribunal while awarding compensation to the extent of Rs. 1,90,000/- along with 10% interest per annum from the date of petition till the date of actual payment. Therefore, the appeal is devoid of merits and is, hereby dismissed. No order as to costs. Amount deposited by the appellant, if any, in this Court shall be transmitted to the M.A.C.T. concerned for its disbursement amongst the claimants of the deceased.

(P.C. Pant, J.)

(P.C. Verma, A.C.J.)

Dt: 07.07.2004

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